

PATENTAttorney Docket No. **TFUND-04809****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of: Thompson et al.
Serial No.: 09/703,562 Group No.: 3622
Filed: 11/01/2000 Examiner: D. Champagne
Entitled: Methods And Systems For Applying Rebates To Higher Education

**DECLARATION OF PHILLIP N. DUNCAN
PURSUANT TO 1.132****EFS WEB-FILED**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

I, Phillip N. Duncan, state as follows:

1. My present position is Tax Member with KraftCPAs PLLC, a CPA firm located in Nashville, Tennessee. I have been a practicing certified public accountant in the area of tax for 29 years.
2. Representatives of TuitionFund, LLC have told me that the Patent Office has said that they view IRAs and 401(k) retirement accounts in a similar light as higher education savings accounts, such as Qualified Tuition Programs (QTPs) and Coverdell Education Savings Accounts (ESAs, formerly called an "education IRA"), which TuitionFund, LLC refers to in their patent application.
3. Earnings from all four of these types of accounts grow on a tax deferred basis. Distributions, on the other hand, have significant economic differences. Distributions from QTPs and ESAs, including earnings, are excluded from a designated beneficiary's income to the extent that the distribution is used to pay for qualified higher education expenses. Distributions from IRAs and 401(k) retirement accounts, on the other hand, are subject to ordinary income tax and potentially an additional 10% early withdrawal penalty if the distribution exceeds "adjusted qualified education expenses".
4. The economic differences become clear through the use of an example. Facts -- a single divorced mother supporting 3 children with the oldest child planning to attend a university as a full-time student where the annual cost of tuition, room, board, fees and

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books (adjusted qualified education expenses) is projected to be \$40,000. Assume she has \$100,000 in an IRA account, neither she nor her children have any QTPs or Educational IRAs, and no other savings so that any taxes in connection with the \$40,000 withdrawal will also have to be made with funds from the IRA account. Assume that her projected taxable income (before any IRA withdrawal) for 2007 will be \$180,000, thereby putting her in a 33% marginal federal tax rate as a Head of Household and that she lives in a state with a 7% state income tax rate. The calculation below shows the amount of funds she would need to withdraw from her IRA to cover the cost of a) attending the university for one year and b) the taxes that would also have to be withdrawn from the IRA.

x = Amount of withdrawal needed
 .33 = Federal tax rate
 .0469 = Effective state tax rate; calculated as follows:
 .07 times .67 (1.00 - .33, federal tax benefit rate)
 .1 (x - 40,000) = Early withdrawal penalty

Calculation

<u>School</u>	<u>Fed & State Tax</u>	<u>10% Early Withdrawal</u>
X = \$40,000	+ (.33 + .0469)X	+ .1(X - 40,000)

$X = \$40,000 + .3769X + .1X - 4,000$
 $X = \$40,000 + .4769X - 4,000$
 $X - .4769X = \$40,000 - \$4,000$
 $.5231X = \$36,000$
 $X = \$68,820$

The total distribution would need to be \$68,820, and the tax would be \$28,820 or over 70% as much as the tuition. On the other hand, only \$40,000 would need to be withdrawn from a QTP or ESA account since the distribution would be tax free.

5. It is obvious from the above example that the use of QTPs or ESAs is a much more efficient way to save for educational expenses. In addition, once money is withdrawn from an IRA or 401(k), it can never be replaced. The chance for tax deferred growth of that money is gone forever.

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6. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements so made are punishable by fine or imprisonment, or both, under section 1001 of title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

By: _____

Phillip N. Duncan

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Date: _____

9/14/07